STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0041

Paul King, et al.,
Appellants,

vs.

County of St. Louis,
Respondent,

Duluth Economic Development Authority,
Respondent.

Filed September 17, 2018
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge

St. Louis County District Court
File No. 69DU-CV-17-529

Elizabeth Royal, Paul Bosman, Elizabeth Royal & Associates, Minneapolis, Minnesota (for appellants Paul King and Copasetic, Inc.)

Mark S. Rubin, St. Louis County Attorney, Nick D. Companario, Assistant County Attorney, Duluth, Minnesota (for respondent St. Louis County)

Gunnar Johnson, Duluth City Attorney, Nathan N. LaCoursiere, Assistant City Attorney, Steven B. Hanke, Deputy City Attorney, Duluth, Minnesota (for respondent Duluth Economic Development Authority)

Considered and decided by Bratvold, Presiding Judge; Cleary, Chief Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

Appellants Paul King and Copasetic Inc. appeal the district court's dismissal of their claims for declaratory and injunctive relief. Appellants argue that the district court erred in concluding (1) that decisions of respondent County of St. Louis (the county) to place King's tax-forfeited property on the forfeited-lands list and ultimately sell it to respondent Duluth Economic Development Authority (DEDA)—described in claims one through four of appellants' complaint—were quasi-judicial in nature and therefore subject only to certiorari review and (2) that it was constitutional to apply the statute of limitations for challenging tax forfeitures to dismiss appellants' fifth claim. Because appellants had a reasonable time to challenge the tax forfeiture, we affirm the dismissal of claim five. But, because claims one through four challenge decisions that are not quasi-judicial, we conclude that the district court has subject-matter jurisdiction over those claims, reverse the dismissal of those claims, and remand to the district court for further proceedings.

FACTS

This case arises out of the disposition of a piece of property in Duluth. From 1998 to 2005, appellants operated a bar and apartments in a building on the property. In 2005, King suffered a stroke and became unable to continue managing the property. As a result, in 2006, King sold the property to Temple Corp. Inc. on a contract for deed. While Temple made payments to King under the contract for deed, Temple paid the real-estate taxes on the property directly to the county from 2006 to 2010. In 2010, a fire damaged the property,

forcing the closure of the building. From 2011 to 2015, no one paid the real-estate taxes due on the property.

On November 24, 2015, a certificate of forfeiture was issued for the property for nonpayment of taxes, and the certificate was recorded in the St. Louis County Recorder's Office one week later. Four months later, on March 8, 2016, the St. Louis County Board of Commissioners adopted a resolution to add the property "to a list of tax forfeited lands to be filed with the County Auditor to be withheld from repurchase for one year because the County Board is of the opinion that the property may be acquired by a municipal subdivision for redevelopment purposes." Four-and-a-half months after that resolution, on July 26, the board adopted a resolution approving the sale of the property to respondent DEDA. On September 15, the state quitclaimed the property to DEDA.

Eight days later, appellants filed a petition for a writ of certiorari with this court, challenging the sale of the property. In November, however, appellants and the county stipulated to dismissal of that petition, and the certiorari appeal was dismissed.

On March 8, 2017, appellants filed a complaint in district court. Because the complaint raised federal due-process claims, respondents removed the case to federal court. Appellants then amended their complaint (resulting in the amended complaint at issue here), seeking relief only on state-law grounds. Claims one, two, and four of the amended complaint challenged the decision of the county to sell the property to DEDA; claim three challenged the decision of the county to list the property on the forfeited-lands list; and claim five challenged the notice appellants received regarding the tax forfeiture of the property.

The case was remanded to state court. The county filed a motion for judgment on the pleadings under Minn. R. Civ. P. 12.03, arguing that the first four claims in the complaint challenged quasi-judicial decisions reviewable only by certiorari appeal to this court and that the fifth claim was barred by the statute of limitations. With its motion, the county included a number of documents, including the county's resolutions placing the property on the forfeited-lands list and approving the sale of the property to DEDA. The same day that the county filed its motion for judgment on the pleadings, DEDA filed a motion to dismiss under Minn. R. Civ. P. 12.02 for substantially the same reasons. Following these motions, appellants filed a motion to again amend their complaint.

The district court held a hearing on August 14, 2017. Following the hearing, the court issued an order granting "County and DEDA's motion to dismiss this action with prejudice on the pleadings." The order also denied appellants' motion to amend the complaint. The district court denied appellants' request to file a motion for reconsideration.

Appellants appeal.

D E C I S I O N

I. Application of Procedural Rules

As a preliminary matter, we address appellants' challenge to the district court's procedural treatment of this case. Appellants argue that the district court erred in not converting the county's motion for judgment on the pleadings to a motion for summary judgment because the county submitted documents not included within the pleadings in support of their motion. Appellant asserts that Minn. R. Civ. P. 12.03, which governs motions for judgment on the pleadings, requires conversion in such a situation because it

states, "[I]f, on such motion, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment . . . and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

The county responds that conversion to a summary-judgment motion was not required because the basis for its motion was a lack of subject-matter jurisdiction, not failure to state a claim. The county analogizes to a motion to dismiss for lack of subject-matter jurisdiction under Minn. R. Civ. P. 12.02, which may be based on documents outside the pleadings without requiring conversion to a motion for summary judgment. *See Turner v. Comm'r of Revenue*, 840 N.W.2d 205, 208 n.1 (Minn. 2013) (explaining that, if a rule 12.02 motion to dismiss is based on a ground other than failure to state a claim, matters outside the pleadings may be considered without converting the motion to one for summary judgment).

We need not resolve this dispute. Even if rule 12.03 were to require conversion to a summary-judgment motion when a motion alleging lack of subject-matter jurisdiction relies on matters outside the pleadings, this case can be resolved based solely on the pleadings and on the two resolutions that are specifically referenced in the amended complaint. *Cf. Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 n.7 (Minn. 2000) (holding that, under rule 12.02, matters "referenced in the complaint" may be considered without conversion to a motion for summary judgment); *Marchant Inv. & Mgmt. Co. v. St. Anthony W. Neighborhood Org.*, 694 N.W.2d 92, 95 (Minn. App. 2005) (applying *Martens* to Minn. R. Civ. P. 12.03 motion), *overruled on other grounds by*

Leiendecker v. Asian Women United of Minneapolis, 848 N.W.2d 244 (Minn. 2014). Thus, conversion to a motion for summary judgment was not required. We, therefore, turn from arguments regarding procedure to the substantive bases for the district court's rulings.

II. Subject-Matter Jurisdiction in the District Court

Appellants argue that the district court erred in concluding that it lacked subject-matter jurisdiction over appellants' claims challenging the decisions to place the property on the forfeited-lands list and to sell the property to DEDA because those decisions were legislative and not quasi-judicial. We review questions of subject-matter jurisdiction de novo. *See Cox v. Mid-Minnesota Mut. Ins. Co.*, 909 N.W.2d 540, 542 (Minn. 2018).

"[C]ertain decisions of local government entities are subject to review only by certiorari under Minn. Stat. § 606.01, which grants exclusive jurisdiction to the court of appeals over petitions for a writ of certiorari. . . . District courts do not have subject-matter jurisdiction over claims that must be resolved in a certiorari appeal." *Zweber v. Credit River Tp.*, 882 N.W.2d 605, 608-09 (Minn. 2016).

Decisions of local government entities are either legislative or quasi-judicial. *Id.* at 609. Legislative decisions are subject to review in the district court and are not subject to direct certiorari appeal. *Id.* Legislative decisions "have broad applicability and 'affect the rights of the public generally.'" *Id.* (quoting *County of Washington v. City of Oak Park Heights*, 818 N.W.2d 533, 549 (Minn. 2012)).

Quasi-judicial decisions, on the other hand, are not subject to district court review but rather may be reviewed only by certiorari appeal. *Id.* "In general, quasi-judicial decisions 'affect the rights of a few individuals analogous to the way they are affected by

court proceedings.'" *Id.* (quoting *Interstate Power Co. v. Nobles Cty. Bd. of Comm'rs*, 617 N.W.2d 566, 574 (Minn. 2000)). There are three indicia necessary for a decision to be quasi-judicial: "(1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim." *Minn. Ctr. For Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999) (*MCEA*). "Failure to meet any of the three . . . indicia is fatal to [a] claim that . . . proceedings were quasi-judicial." *Id.* at 844.

A. Placement of the Property on the Forfeited-Lands List

Appellants challenge the county's decision, reflected in its first resolution, to place the tax-forfeited property on the forfeited-lands list. Placement on the forfeited-lands list precludes the former property owner from repurchasing the property while the property is on the list. Minn. Stat. § 282.322 (2016). A county board may decide to place property on the forfeited-lands list so long as the "board is of the opinion that such lands may be acquired by the state or any municipal subdivision of the state for public purposes." *Id.*

We begin with the second indicium of a quasi-judicial decision—that the decision involves application of a prescribed standard. The supreme court's decision in *Handicraft Block Ltd. P'ship v. City of Minneapolis* gives guidance for resolving this issue. 611 N.W.2d 16 (Minn. 2000). In *Handicraft*, the supreme court decided that a governmental decision to designate a building as subject to heritage preservation was a quasi-judicial decision. *Id.* at 23. In analyzing whether the decision involved a prescribed standard, the court contrasted the heritage-preservation decision with the legislative decision in *MCEA* regarding whether a project was "consistent with [a] long-range plan." *Id.* at 21. The court

noted that the guidelines for heritage-preservation status "provide[d] [a] framework for the facts . . . investigate[d] and findings . . . [made] regarding the property." *Id.* at 23. That framework consists of "specific criteria that curtail the discretion of the City." *Id.* at 22. The court observed that, in *MCEA*, in contrast, the federal statutory requirement that a transportation improvement plan be "consistent with" a long-range plan was "flexible," and the requirement that government only "consider" a number of "non-specific" goals did not amount to prescribed standard. *Id.* at 21-22.

The putative standard in this case—that the county board is "of the opinion" that the property "may be" acquired by a municipal subdivision for a public purpose—is closer to the nonspecific and flexible considerations in *MCEA* than the specific and mandatory criteria in *Handicraft*. Whether the board is "of the opinion" that there may be a municipal buyer is not a standard to be applied to a set of evidentiary facts to arrive at a decision as to whether the board is or is not of a certain opinion; rather, the board's "opinion" is the decision itself. Moreover, that a municipal subdivision *may* acquire the property merely expresses a possibility that it might happen—or not. *See Funk & Wagnalls New Standard Dictionary of the English Language* 1531 (1945) (giving the first two definitions of "may" as "[t]o have permission; be allowed; have the physical or moral opportunity" and "[t]o be contingently possible"). Again, that language does not provide a specific standard that can be applied to evidentiary facts to arrive at a conclusion.

To be quasi-judicial, the county's decision must also meet the first indicium—that it involves investigation into a disputed claim and weighing of evidentiary facts. Again, we find guidance in *Handicraft*. The supreme court in *Handicraft* explained why the

heritage-preservation-designation proceedings in that case were "more typical of judicial proceedings than legislative proceedings." 611 N.W.2d at 20. The court noted that the property owner was a formally identified party to the proceedings; the property owner received notice of possible designation; the property owner was invited to present evidence and was given a list of the factors that would govern the decision; oral testimony and written evidence was submitted; and the city weighed evidence, found facts, and arrived at a legal conclusion. 611 N.W.2d at 22-23. Here, in contrast, no written notice to the previous owner of tax-forfeited property is required before a county board can place the property on the forfeited-lands list. *See* Minn. Stat. § 282.322. Rather, as the county acknowledged at oral argument, only general notice of the meeting to the public at large is required. There are no factual findings to be made and no legal conclusions to be drawn. The process for deciding to place property on a forfeited-lands list is more typical of a legislative proceeding than a judicial proceeding.

In urging a different conclusion, the county points out that the decision is limited to a single parcel of tax-forfeited property and "had no direct legal impact on anyone other than DEDA, Copasetic, and perhaps a few other persons." Placement of property on the forfeited-lands list does have a consequence that is specific to the former owner—the owner cannot repurchase the property while the property is listed. Minn. Stat. § 282.322. And, as noted above, "[i]n general, quasi-judicial decisions affect the rights of a few individuals analogous to the way they are affected by court proceedings." *Zweber*, 882 N.W.2d at 609 (quotation omitted). But that is a general rule, and all indicia of a quasi-judicial decision must still be met before the matter is subject to this court's exclusive

certiorari review. Because the first and second indicia are not met, we conclude that the decision to place the property on the forfeited-lands list was not quasi-judicial. The district court therefore has subject-matter jurisdiction over the claims relating to that decision.

B. Sale of the Property to DEDA

Appellants also challenge the county's decision, reflected in its second resolution, to sell the property to DEDA. Once property has been forfeited, a county board may approve the sale of the property to a governmental subdivision for less than market value if "a reduced price is necessary to provide an incentive to correct the blighted conditions that make the lands undesirable in the open market" and the governmental subdivision "has documented its specific plans for correcting the blighted conditions." Minn. Stat. § 282.01, subd. 1a(d) (2016).

We begin with the first indicium of a quasi-judicial decision—that it involves "investigation into a disputed claim and weighing of evidentiary facts." *MCEA*, 587 N.W.2d at 842. With respect to the decision to sell to DEDA, appellants had no disputed claim to be investigated. At the time the county decided to sell, appellants had no particular interest in the property above and beyond that held by the general public. Although King was the owner of the property before its forfeiture, at the time of the second resolution he had no special interest in it. The property had been forfeited to the state, and the only potentially distinguishing right he had was the repurchase right under Minn. Stat. § 282.241, subd. 1 (2016). That statute permits a property owner to repurchase forfeited property during the six months following forfeiture if the county board of commissioners determines that, by permitting repurchase, "undue hardship or injustice" resulting from the

forfeiture will be avoided. But, due to the county's prior act of placing the property on the forfeited-lands list, King did not have the right to repurchase. As a result, the decision to sell the property to DEDA did not affect "the rights of a few individuals," *see Zweber*, 882 N.W.2d at 609, but rather was akin to a county board's decision to sell any other piece of property belonging to the county. The conclusion that appellants had no specific disputed claim is also reflected in the fact that, as with the county's forfeited-lands decision, Minnesota law does not require any notice other than the general notice given to the public at large of the county board meeting prior to the board's decision to sell the property.

The county cites to *MacCharles v. State Dep't of Revenue*, 584 N.W.2d 795, 799 (Minn. App. 1998) to argue that this decision was quasi-judicial. We are unpersuaded. In *MacCharles*, the decision at issue was the refusal of the county board to accept the respondents' repurchase application after forfeiture had occurred. 584 N.W.2d at 797. *MacCharles* did not involve property withheld from repurchase because the property was on a forfeited-lands list. The respondents in *MacCharles* were thus uniquely situated in contrast to the public as a whole: only they had the right to repurchase the property; only they had applied to repurchase the property; and only their application was refused.

In this case, on the other hand, appellants (as discussed above) did not possess any right that distinguished them from the public generally. Unlike in *MacCharles*, appellants do not base their claims on any alleged denial by the county of a repurchase application by them. Rather, appellants claim that the county failed to satisfy statutory standards regarding the sale of tax-forfeited property to a governmental entity when it sold the property to DEDA. The absence of a claim based on an alleged denial of a repurchase

application is the key difference between *MacCharles* (where jurisdiction was exclusively in the court of appeals on certiorari review) and this case. *MacCharles* is thus inapposite, and, because the decision to sell to DEDA did not involve investigation into a disputed claim with appellants, we conclude that the decision to sell the property to DEDA was not a quasi-judicial decision.[1]

III. Statute of Limitations

The district court dismissed appellants' claim challenging the tax forfeiture of the property because the claim was brought after the limitations period had expired. Appellants do not contend that they met the statute of limitations but instead argue that applying the statute of limitations violated their procedural-due-process rights under the Minnesota Constitution. "Whether procedural due process has been violated is a question of law that we review de novo." *Gams v. Houghton*, 884 N.W.2d 611, 618 (Minn. 2016). "A statute is presumed constitutional," and "[a] party who challenges a Minnesota statute as unconstitutional bears the burden of establishing beyond a reasonable doubt that the statute violates some constitutional provision." *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988).

"No person shall . . . be deprived of life, liberty or property without due process of law." Minn. Const. art. I § 7. If a party is "barred by the statute of limitations from having

[1] We recognize that appellants' amended complaint alleges that King made two offers to purchase the property and that the county ignored offers to repurchase. But appellants' claims—as explained in the relevant counts in their amended complaint—challenge only the county's decisions to place the property on the forfeited-lands list pursuant to Minn. Stat. § 282.322 and to sell the property to DEDA at below market value pursuant to Minn. Stat. § 282.01, subd. 1a(d). Those two decisions were not quasi-judicial.

a reasonable time" to bring a claim, then the statute of limitations violates the due process requirements of our constitution. *See Calder v. City of Crystal*, 318 N.W.2d 838, 844 (Minn. 1982).

The Minnesota Supreme Court has not explicitly specified what amount of time constitutes a reasonable time, instead noting that "[w]hat may be a reasonable time depends upon the sound discretion of the legislature[,] . . . [and] . . . courts will not inquire into the wisdom of the exercise of this discretion . . . unless the time allowed is manifestly so short as to amount to a practical denial of justice." *Wichelman v. Messner*, 83 N.W.2d 800, 806 (Minn. 1957). The court has found both 6-month and 14-month time periods to be constitutional. *See Bulau v. Hector Plumbing & Heating Co.*, 402 N.W.2d 528, 531 (Minn. 1987) ("[Respondent] had almost six months, . . . during which to bring its contribution action against [appellant]. [Respondent] failed to do so. It was, therefore, [respondent's] own inaction and not a procedural statute of limitations, making the remedy impossible to achieve, that prevented [respondent] from seeking contribution.") (internal citation omitted); *Calder*, 318 N.W.2d at 844 ("We are not required, in deciding this case, to indicate what such a reasonable time limitation should be . . . . [T]he city was aware of the injury long before it was sued. It had 14 months after being sued in which to join these third parties.").

The statute of limitations in this case provides that any claim "adverse to the state, or its successors in interest, . . . respecting any lands claimed to have been forfeited to the state for taxes" must be commenced within one year after the filing of the certificate of forfeiture. Minn. Stat. § 284.28, subd. 2 (2016). The statute applies to suits brought by

individuals under a disability, who, instead of having the statute tolled, can recover damages out of the general fund once their disability is removed. *Id.* subd. 4 (2016).

Appellants commenced this action on March 8, 2017. They first argue that (1) King is disabled due to his stroke; (2) therefore, he could not bring a claim within the statute of limitations' timeframe; and (3) because the statute of limitations is not tolled for individuals under a disability, it resulted in a taking of his property without due process. But, contrary to appellants' argument, King not only *could* bring a claim within the statutory time period, he *did* bring a claim within the statutory time period. The certificate of forfeiture was filed on December 1, 2015. Ten months later, appellants petitioned this court for a writ of certiorari, seeking review of the decisions discussed above. *See* Petition for Writ of Certiorari, *King v. County of St. Louis*, No. A16-1530 (Minn. App. Sept. 23, 2016). King thereafter voluntarily dismissed his certiorari appeal. Because King was capable of bringing a claim within the statute of limitation's timeframe, we need not consider whether section 284.28's treatment of claims by individuals under a disability impacts appellants' due process rights.

Appellants next argue that the statute must provide additional time to bring a claim in order to pass constitutional muster. We are unpersuaded. The Minnesota Supreme Court has indicated that time periods as short as six months meet the requirements of procedural due process. *See Bulau*, 402 N.W.2d at 531. Here, the statute gave appellants one year from the filing of the certificate of forfeiture to bring their claim, and appellants concede they had notice of that filing no later than one month after it occurred. Even if the statute of limitations was tolled by this one-month delay in notice, appellants still would have been

required to file their claim by January 2017. They did not do so, and the district court did not err in concluding that the statute of limitations therefore barred their tax-forfeiture claim.

Affirmed in part, reversed in part, and remanded.